

1880  
JULY 12.

5 B. 130.

## [130] APPELLATE CIVIL.

APPEL-  
LATE  
CIVIL.  
5 B. 130.*Before Mr. Justice M. Melwill and Mr. Justice Kemball.*NARAYAN DESHPANDI (*Original Applicant*), *Appellant v. ANAJI DESHPANDE (Original Opponent), Respondent.*\* [12th July, 1880.]*Execution—Sale—Purchase by son of decree-holder—The Code of Civil Procedure, Act X of 1877, s. 294.*

A purchase by the son of a decree-holder, undivided in interest from his father, is a purchase by the decree-holder within the meaning of s. 294 of Act X of 1877 as it stood previously to its amendment by Act XII of 1879, and is absolutely void, if the purchase were made with funds which were the joint property of the father and son.

In the absence of evidence to the contrary, the legal presumption would be that the funds were joint property.

THIS was an appeal from an order made by Rao Bahadur G. G. Phatak, Subordinate Judge (First Class) of Dharwar.

In execution of a decree passed in favour of one Konherraio Deshpande and others, certain immoveable property belonging to the judgment-debtor, Narayan Deshpande, was put up for sale. Anaji, the son of Konherraio, without obtaining the permission of the Court, bid at the sale and purchased the property for Rs. 340 in March 1879. The judgment-debtor applied to the Subordinate Judge of Dharwar to set aside this sale, alleging that it was void under s. 294 of the Civil Procedure Code (X of 1877), as the purchaser was the son of Konherraio, one of the decree-holders, and united in interest with him. He also alleged that there were irregularities in the conduct and publication of the sale. Anaji opposed the application, and the Subordinate Judge refused it. He found that the property sold was worth at least Rs. 1,000. He was of opinion that the son was not a decree-holder as contemplated in the first paragraph of s. 294, and therefore that he was not at liberty to set aside the sale in the conduct of which he found there had been no irregularities. Act XII of 1879 became law on the 29th of July 1879, some months after the sale, and did not apply to the case.

*Manekshah Jehangirshah*, for the appellant.—The purchase in this case was by a son united with his father, the decree-holder, [131] and presumably with his funds and for the benefit of both. The maxim *qui facit per alium facit per se* therefore applies. Valuable property was sold for a mere trifle.

*Shantaram Narayan*, for respondent.—Section 294 has no application to the present case. The first paragraph of s. 294 should be read and construed so as to apply to the case where the purchaser is the sole decree-holder. A purchase by a son is not necessarily a purchase by his father. The circumstance that the purchase might eventually result to the benefit of both is quite immaterial. The word "decree-holder" in the section applies only to the person in whose favour the decree is passed. There is no evidence in the case that the son actually acted in this case as the representative of his father, and there is no such legal presumption. This contention receives support from the fact that the Legislature would not permit the son to represent his father in a case in which the son of a decree-holder wishes to apply in his absence to enforce a decree to save it.

\* Appeal No. 12 of 1880 from order.

from being time-barred. The Legislature could not have intended to throw upon any person the disadvantages of a *status* without its advantages. Even if the son in this case purchased with the family funds, the purchase must remain good so long as no authority could be proved as been having given by the father to the son.

## JUDGMENT.

The judgment of the Court was delivered by

M. MELVILL, J.—The sale in this case was made before the passing of Act XII of 1879, and is, therefore, governed by the first paragraph of s. 294 of Act X of 1877. Under the law, as contained in that paragraph, a purchase contrary to its provisions would be absolutely void. The question is, whether a purchase by the son of the decree-holder, undivided in interest from his father, is a purchase by the decree-holder within the meaning of the paragraph. We are of opinion that, if the purchase were made with funds, which were the joint property of the father and son (and, in the absence of evidence to the contrary, the legal presumption would be that the funds were joint), the purchase, being for the joint benefit of the decree-holder and the son, would constitute the decree-holder a purchaser within the meaning of the paragraph. We cannot, however, decide the question [132] in this case, without giving to the decree-holder an opportunity of showing that the purchase was not made with joint funds, and for the joint benefit of himself and his son. We must remand the case in order that the decree-holder, Konherra Kashi, may be made a party. The original decree and the proceedings in execution are not before us: but we are informed that there were other decree-holders besides Konherra, and it may be that they have received portion of the purchase-money, or are otherwise interested in maintaining the sale. If so, they also should be made parties. We think that there is no reliable evidence of any irregularity in publishing or conducting the sale, and that there is, therefore, no reason for setting aside the sale upon this ground. We reverse the order of the Subordinate Judge, and remand the case, in order that the necessary parties may be brought upon the record, and have an opportunity afforded to them of giving evidence on the question at issue; and that thereupon a new decision may be passed, in accordance with the law, as above laid down. Costs to follow the final decision.

*Order reversed and case remanded.*

5 B. 132.

## APPELLATE CIVIL.

*Before Mr. Justice M. Melvill and Mr. Justice F. D. Melvill.*

JECHAND KHUSAL (*Applicant*) v. ABA AND BAIKA, (*Opponents*).\*  
[26th July, 1880.]

*Civil Procedure Code, Act X of 1877, s. 266, cl. (j)—Labourer—Wages—Execution—Attachment.*

Persons who agree to spin cotton belonging to spinning and weaving company, and to receive a certain amount of money for a certain quantity of cotton spun by them, are labourers within the meaning of s. 266 of the Code of Civil Procedure, Act X of 1877, and, therefore, their remuneration is wages, which, under cl. (j) of the section, cannot be attached in execution of a decree.

\* Extraordinary Civil Application, No. 31 of 1880.